

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.17A-150, 304.17A-235, 304.17A-500, 304.17A-527, 304.17A-530, 304.17A-532, 304.17A-560, 304.17A-575, 304.17A-578, 304.17A-728, 304.17C-060, 304.17C-070, 304.99

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1), 304.17C-060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner ~~[executive director]~~ to promulgate reasonable administrative regulations necessary to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-527(1) and KRS 304.17C-060(1) authorize~~require~~ the Commissioner ~~[Department]~~ to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes the filing requirements of provider agreements, subcontract agreements, and risk sharing arrangements.

Section 1. Definitions.

(1) "Provider agreement" means a contract between an insurer offering a managed care plan and a provider for the provision of health care services.

(2) "Subcontract agreement" means a contract for the provision of health care services to:

An enrollee, which shall be [is] negotiated between a participating health care provider with a managed care plan and a nonparticipating provider with a managed care plan; or

(b) A covered person, which shall be [is] negotiated between a risk sharing entity through a risk sharing arrangement, as identified in KRS 304.17A-500(13)₁ and a provider.

Section 2. Filing Requirements. (1) An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the following with the commissioner at least sixty (60) days before its use:

(a) Provider agreement;

(b) Risk sharing arrangement; and

(c) Subcontract agreement.

(2) A filing pursuant to subsection (1) of this section shall:

(a) Include:

1. A compensation arrangement, including a description of the:

a. Payment methodology; and

b. Payor as defined in the agreement;

2. Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section;

3. A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in 806 KAR 14:007~~[17:005]~~; and

4. A filing fee, including:

a. Twenty-five (25) dollars for a provider agreement or subcontract agreement filing; or

b. Fifty (50) dollars for a risk sharing arrangement filing; and

(b)1. Not be considered complete until the information required by paragraph (a) of this subsection is received by the department; and

2. Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(3) If a managed care plan, insurer, or limited health service benefit plan amends an existing provider agreement, subcontract agreement, or risk sharing agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:

- (a) An amended filing at least sixty (60) days before its use; and
- (b) A letter that identifies and explains each amendment.

(4) The failure of a managed care plan, insurer, or limited health service benefit plan to file a sample copy of a provider agreement, subcontract agreement, or risk sharing agreement may result in imposition of a civil penalty in accordance with KRS 304.99.

(5) An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HL-F11, Health Summary Sheet – Form Filings, incorporated by reference in 806 KAR 14:007 [~~HIPMC-F37, Limited Health Service Benefit Plan Summary Sheet – Form Filings (07/02)~~], to each limited health service benefit plan filed with the commissioner.

Section 3. Provider Agreement Requirements. (1) The sample copy of a provider agreement for an insurer or managed care plan filed with the commissioner shall:

- (a) Comply with the requirements of KRS 304.17A-527(1);
- (b) Comply with the requirements of KRS 304.17A-728; ~~[and]~~
- (c) Comply with the requirements of KRS 304.12-237, as applicable; and
- (d) Not include a:

- 1. Most-favored nation provision in accordance with KRS 304.17A-560;
- 2. Limitation on disclosure provision in accordance with KRS 304.17A-530;
- 3. Condition of participation provision in accordance with KRS 304.17A-150(4); and
- 4. Mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).

(2) The sample copy of a provider agreement for a limited health service benefit plan filed with the commissioner shall:

- (a) Comply with the requirements of KRS 304.17C-060(1);
- (b) Be governed by Kentucky law; and
- (c) Not include a limitation on disclosure provision in accordance with KRS 304.17C-070.

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that is part of a provider agreement or risk sharing arrangement shall:

- (1) Be filed with the commissioner by the managed care plan, limited health service benefit plan, or insurer in conjunction with the provider agreement or risk sharing arrangement;
- (2) Meet applicable requirements of Section 3 of this administrative regulation; and
- (3) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

Section 5. Risk Sharing Arrangement Requirements. (1) The sample copy of a risk sharing arrangement filed with the commissioner shall:

- (a) Meet the requirements of Section 3 of this administrative regulation;
- (b) Include a Risk Sharing Arrangement Information Sheet, HIPMC-R1, incorporated by reference in Section 6 of this administrative regulation~~[incorporated by reference in 806 KAR 17:005]~~; and

- (c) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

(2) On or before September 1 of each calendar year, an insurer, managed care plan, or limited health services benefit plan shall file with the commissioner the HIPMC-R1, incorporated by reference in Section 6 of this administrative regulation~~[806 KAR 17:005]~~, for each risk sharing arrangement currently effective.

Section 6. Incorporation by Reference. (1) HIPMC-R1, Risk Sharing Arrangement Information Sheet, 10/2021 [~~"Limited Health Service Benefit Plan Summary Sheet - Form Filings HIPMC-F37", 07/18~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~215 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [~~http://insurance.ky.gov~~].

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: November 5, 2021

FILED WITH LRC: November 12, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Regulations Coordinator, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of: This administrative regulation establishes the filing requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(a) What this administrative regulation does: This administrative regulation provides information to insurers relating to the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information insurers relation to the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110, which authorizes the Commissioner to promulgate regulations necessary for or as an aid to the effectuation of any provision of the Insurance Code. More specifically, KRS 304.17A-527(1) and KRS 304.17C-060(1) require the Commissioner to promulgate administrative regulations regarding the manner and form of required filings of sample copies of providers agreements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist health insurers by providing the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation will incorporate Form HIPMC-R1, Risk Sharing Arrangement Information Sheet, from 806 KAR 17:005, in order to allow for the repeal 806 KAR 17:005. There are also drafting and technical amendments to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of this amendment is to incorporate the above-referenced form, in order to allow for the repeal 806 KAR 17:005, and to ensure the regulation cites to the correct forms in 806 KAR 14:007. The forms referenced and incorporated in this regulation are required to be filed as part of the process and requirements set forth in this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-527(1) and KRS 304.17C-060(1) both set forth filing requirements for provider agreements, subcontractor agreements, and risk sharing arrangements. Each statute also authorizes the commissioner to promulgate administrative regulations to prescribe the manner and forms in which an insurer shall meet filing requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment prescribes a new form for insurers that enter into provider agreements, subcontractor agreements, and risk sharing arrangements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any health insurer offering managed care plans or limited health services benefit plan.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The amendment to this regulation does not alter or change the requirements or filing process for insurers. An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the information prescribed in Section 2 of this administrative regulation with the commissioner at least sixty (60) days before its use. If an insurer is filing an amendment, they must abide by the requirements in Section 2(3). An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HL-F11, Health Summary Sheet – Form Filings, incorporated by reference in 806 KAR 14:007. Any insurer partaking in a risk sharing arrangement must meet the requirements set forth in Section 5.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Insurers will be required to submit the prescribed fees with the specified filings to the Commissioner. The amendment to this regulation does not set forth any new fees.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this administrative regulation, insurers will also ensure compliance with the statutory requirements of KRS 304.17A-527 and KRS 304.17C-060.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an ongoing cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not prescribe any new fees for these filings. This amendment does not establish any new fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering does not apply; depending on the submission, any health insurer offering a managed care plan or limited health services benefit plan shall file the appropriate forms and copies as prescribed in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the entity implementing of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), KRS 304.17A-527(1), and KRS 304.17C-060(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate any revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: As the amendments to this administrative regulation simply clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.